

Upper Clark Fork River Basin Steering Committee

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MEMORANDUM

Date: March 6, 2007

To: Interested Individuals or Organizations

From: Upper Clark Fork River Basin Steering Committee

Re: Milltown Dam Water Rights Paper Outline

The Milltown Dam is scheduled for removal in 2008. Milltown currently has significant hydropower water rights. The Steering Committee intends to write a paper concerning these water rights and possible alternatives regarding them once the dam is removed.

Attached is an outline of the paper which the Steering Committee is circulating for comments. At its next meeting on May 2, the Steering Committee will finalize this outline and begin to write the paper.

Comments on the outline may be sent to Gerald at gmueller@montana.com or to the address above.

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Outline of the Milltown Dam Water Right Paper

March 6, 2007

I. Introduction

- A. Pending dam removal
- B. Removal will affect the Milltown Dam water right(s)
- C. Purpose of the paper
 - 1. Identify and discuss alternatives for the water right(s)
 - 2. Inform basin water users about the alternatives

II. Montana Water Law

- A. Article 1X Section 3(3) of Montana's Constitution establishes state ownership of the state's water and the right of her people to use water beneficially.
- B. Definition of a water right
- C. Prior appropriation doctrine
 - 1. First-in-time, first-in-right
 - 2. Use it or lose it
 - 3. Law regarding abandonment
 - 4. Water right call mechanism/process
- D. Appropriation of Water
 - 1. General provisions and rules
 - 2. Change of use
 - a. Point of diversion
 - b. Place of use
 - c. Purpose of use
 - d. Place of storage
 - e. Special criteria for uses with 5.5 cfs/4,000 acre-feet per year
 - f. Temporary leasing provisions
 - g. Approval criteria
 - i. Adverse effects tests
 - ii. Historic use
 - iii. Rule requirements
- D. State wide water rights adjudication

III. Milltown Dam Water Rights

- A. Existing hydropower water rights
 - 1. Claim features and attributes
 - 2. Status
- B. Superfund/NRD obligations
 - 1. Milltown consent decree provisions specific to the Milltown water right

IV. Milltown Dam Water Right Change Alternatives

- A. Abandonment
- B. Alternative uses
 - 1. Transfer ownership to new or existing hydropower facilities
 - a. Requires change of point of diversion and place of use/storage
 - b. Enforcement implications
 - 2. Transfer to consumptive use
 - a. Unlikely to pass adverse affects test

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- 3. Transfer to fishery instream flow right
 - a. Requires change of purpose of use from hydropower to fishery
 - b. Amount of right based on fishery needs
- C. Transfer of ownership
 - 1. Other governments
 - a. Federal (e.g. Department of Interior)
 - b. State (e.g. Montana Department of Fish, Wildlife and Parks)
 - c. Tribes (e.g. Confederated Salish and Kootenai Tribes)
 - 2. Private entities

V. Over view of Upper Clark Fork Basin Water Budget

- A. Basin & sub basin yields

VI. Upstream Water Uses

- A. Junior water rights
 - 1. Location
 - 2. Purpose
 - 3. Priority date
 - 4. Amount
- B. Basin by basin discussion
 - 1. Existing water allocation activities
 - 2. Limiting water rights
 - 3. Priorities
 - 4. Management strategies

VI. Enforcement and Management Alternatives

- A. Water right calls
- B. Low flow water management
 - 1. Enforced through water commissioners
 - 2. Implemented through voluntary drought plans
 - 3. Conditioning in the change of use process
- C. Other